

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

STERLING BLAIR ABERNATHY  
2462 Salamanca  
La Verne, CA 91750

Certified Public Accountant  
Certificate No. 46384

Respondent.

Case No. AC-2012-31

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 1, 2012.

It is so ORDERED August 2, 2012.

  
\_\_\_\_\_  
FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2520  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC-2012-31

11 **STERLING BLAIR ABERNATHY**  
12 **2462 Salamanca**  
13 **La Verne, CA 91750**

14 **Certified Public Accountant**  
**Certificate No. 46384**

**STIPULATED SURRENDER OF  
LICENSE AND ORDER**

15 Respondent.

16  
17  
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
19 proceeding that the following matters are true:

20 PARTIES

21 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of  
22 Accountancy. She brought this action solely in her official capacity and is represented in this  
23 matter by Kamala D. Harris, Attorney General of the State of California, by Gregory J. Salute,  
24 Supervising Deputy Attorney General.

25 2. Sterling Blair Abernathy (Respondent) is represented in this proceeding by attorney  
26 Robert Fairbank, Esq. whose address is 444 South Flower Street, Ste. 3860, Los Angeles, Ca.  
27 90071.  
28

1       3.     On or about December 5, 1986, the California Board of Accountancy issued Certified  
2 Public Accountant Certificate No. 46384 to Sterling Blair Abernathy (Respondent). The Certified  
3 Public Accountant Certificate expired on January 31, 1998, and was cancelled on February 1,  
4 2003. Despite the cancelled status of the license, the Board has jurisdiction to adjudicate this case  
5 and render a decision pursuant to Section 5109 of the Business and Professions Code.

6                                   JURISDICTION

7       4.     Accusation No. AC-2012-31 was filed before the California Board of Accountancy  
8 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The  
9 Accusation and all other statutorily required documents were properly served on Respondent on  
10 March 9, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A  
11 copy of Accusation No. AC-2012-31 is attached as Exhibit A and incorporated by reference.

12                                   ADVISEMENT AND WAIVERS

13       5.     Respondent has carefully read, fully discussed with counsel, and understands the  
14 charges and allegations in Accusation No. AC-2012-31. Respondent also has carefully read, fully  
15 discussed with counsel, and understands the effects of this Stipulated Surrender of License and  
16 Order.

17       6.     Respondent is fully aware of his legal rights in this matter, including the right to a  
18 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at  
19 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
20 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
21 the attendance of witnesses and the production of documents; the right to reconsideration and  
22 court review of an adverse decision; and all other rights accorded by the California  
23 Administrative Procedure Act and other applicable laws.

24       7.     Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
25 every right set forth above.

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1 CULPABILITY

2 8. The parties acknowledge that the basis for the Accusation is the March 3, 2011 Order  
3 set forth in SEC Release No. 64025/Administrative Proceeding File No. 3-14283 ("the Order")  
4 and the February 17, 2011, Final Judgment ("judgment") entered by the Securities and Exchange  
5 Commission ("SEC"). Respondent, without admitting or denying the findings of the Order  
6 (except as to jurisdiction, subject matter and procedural timing) consented to the entry of the  
7 Order. Respondent also, without admitting or denying the allegations of the SEC Complaint filed  
8 on February 11, 2011, (except as to jurisdiction), consented to the entry of the February 17, 2011,  
9 judgment. Respondent admits that he failed to report his investigation by the SEC to the Board  
10 within the 30 day notice period.

11 9. For the purpose of resolving the Accusation without the expense and uncertainty of  
12 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
13 basis for the charges in the Accusation and that those charges constitute cause for discipline.  
14 Respondent hereby gives up his right to contest that cause for discipline exists based on those  
15 charges.

16 10. Respondent hereby surrenders his Certified Public Accountant Certificate for the  
17 Board's final acceptance. Respondent understands that by signing this stipulation he enables the  
18 CBA to issue an order accepting the surrender of his Certified Public Accountant Certificate  
19 without further process.

20 RESERVATION

21 11. The admissions made by Respondent herein are only for the purposes of this  
22 proceeding, or any other proceedings in which the California Board of Accountancy or other  
23 California professional licensing agency is involved, and shall not be admissible in any other  
24 criminal or civil proceeding.

25 CONTINGENCY

26 12. This stipulation shall be subject to approval by the California Board of Accountancy.  
27 Respondent understands and agrees that counsel for Complainant and the staff of the California  
28 Board of Accountancy may communicate directly with the CBA regarding this stipulation and

1 surrender, without notice to or participation by Respondent or his counsel. By signing the  
2 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
3 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to  
4 adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order  
5 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action  
6 between the parties, and the CBA shall not be disqualified from further action by having  
7 considered this matter.

8 13. The parties understand and agree that facsimile copies of this Stipulated Surrender of  
9 License and Order, including facsimile signatures thereto, shall have the same force and effect as  
10 the originals.

11 14. This Stipulated Surrender of License and Order is intended by the parties to be an  
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
14 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order  
15 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
16 executed by an authorized representative of each of the parties.

17 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
18 the CBA may, without further notice or formal proceeding, issue and enter the following Order:

19 ORDER

20 IT IS HEREBY ORDERED that Certified Public Accountant Certificate 46384, issued to  
21 Respondent Sterling Blair Abernathy, is surrendered and accepted by the California Board of  
22 Accountancy.

23 1. The surrender of Respondent's Certified Public Accountant Certificate and the  
24 acceptance of the surrendered license by the CBA shall constitute the imposition of discipline  
25 against Respondent. This stipulation constitutes a record of the discipline and shall become a part  
26 of Respondent's license history with the California Board of Accountancy.

27 2. Respondent shall lose all rights and privileges as a Certified Public Accountant in  
28 California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA his wall certificate on or before the effective date of the Decision and Order.


4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the CBA shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2012-31 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

5. In consideration of Respondent's stipulation to surrender his certificate, the Board will not seek reimbursement of related and accrued investigation and prosecution costs in this matter. However, should Respondent seek reinstatement of his certificate in the future, he agrees that prior to the Board's consideration of his petition for reinstatement, he shall pay the agency its costs of investigation and enforcement in the amount of \$5,176.00 as reimbursement for costs incurred in this action.

## ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Robert H. Fairbank, Esq. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

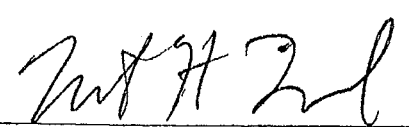
DATED: 5/17/12

  
STERLING BLAIR ABERNATHY  
Respondent

1 I have read and fully discussed with Respondent Sterling Blair Abernathy the terms and  
2 conditions and other matters contained in this Stipulated Surrender of License and Order. I  
3 approve its form and content.

4  
5 DATED:

May 21, 2012

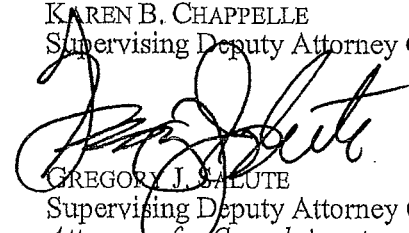
  
ROBERT H. FAIRBANK, Esq.  
Attorney for Respondent

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14 ENDORSEMENT

15 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted  
16 for consideration by the California Board of Accountancy of the Department of Consumer  
17 Affairs.

18 Dated: 5/22/12

Respectfully submitted,

19  
20 KAMALA D. HARRIS  
Attorney General of California  
21 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
22  
23   
GREGORY J. SALUTE  
24 Supervising Deputy Attorney General  
Attorneys for Complainant  
25  
26

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Abernathy Stipulation.docx  
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**Exhibit A**

**Accusation No. AC-2012-31**

1 KAMALA D. HARRIS  
Attorney General of California  
2 Karen B. Chappelle  
Supervising Deputy Attorney General  
3 Gregory J. Salute  
Deputy Attorney General  
4 State Bar No. 164015  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
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10 **STATE OF CALIFORNIA**

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13 **2462 Salamanca**  
14 **La Verne, CA 91750**

**A C C U S A T I O N**

15 **Certified Public Accountant.**  
16 **Certificate No. 46384**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as  
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.  
22 2. On or about December 5, 1986, the California Board of Accountancy (CBA) issued  
23 Certified Public Accountant Certificate Number 46384 to Sterling B. Abernathy (Respondent).  
24 The Certified Public Accountant Certificate expired on January 31, 1998 and was cancelled on  
25 February 1, 2003. Despite the cancelled status of the license, the board has jurisdiction to  
26 adjudicate this case and render a decision pursuant to Section 5109 of the Business and  
27 Professions Code.  
28

JURISDICTION

3. This Accusation is brought before the CBA under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 5063(b)(3) and (4), state:

(b) A licensee shall report to the board in writing the occurrence of any of the following events occurring on or after January 1, 2003, within 30 days of the date the licensee has knowledge of the events:

(3) Any notice of the opening or initiation of a formal investigation of the licensee by the Securities and Exchange Commission or its designee.

(4) Any notice from the Securities and Exchange Commission to a licensee requesting a Wells Submission.

5. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(h) Suspension or revocation of the right to practice before any governmental body or agency.

"(l) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation."

6. Section 5107(a) of the Code states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

7. Section 5109 of the Code provides:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FACTS

9. From on or about April 25, 2008 to on or about July 2008, Respondent was the Chief Financial Officer of IndyMac Bancorp, Inc ("IndyMac"). Respondent was also IndyMac Bank, F.S.B.'s ("IndyMac Bank") executive vice president in charge of four Bank groups: Capital Markets (November 2007 to April 25, 2008); Speciality Lending (March 2007 to November 2007); Investment Portfolio (2004 to March 2007) and Secondary Marketing (1994 to 2004). IndyMac was a Delaware corporation with its principal executive offices in Pasadena, Ca. IndyMac's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and traded on the New York Stock Exchange until it was delisted on or about August 18, 2008. On or about July 31, 2008, IndyMac filed for Chapter 7 bankruptcy.

10. On or about February 11, 2011, the Securities and Exchange Commission ("Commission") filed a complaint against Respondent in *SEC v. Abernathy*, Civil Action No. CV 11-1308-JFW (SSx) in the United States District Court for the Central District of California. The Commission's complaint alleged that in 2007, Respondent negligently made materially false and misleading statements in the offer and sale of six IndyMac Bank mortgage-backed securities offerings regarding the quality of the residential mortgage loans underlying the offerings. In addition, the complaint alleged that Respondent negligently made false and misleading statements

1 regarding IndyMac's capital and liquidity position in its common stock prospectus filed on May  
2 2, 2008. The complaint alleged that Respondent, by his conduct, violated Sections 17(a)(2) and  
3 17(a)(3) of the Securities Act.

4 11. On or about February 17, 2011, a final judgment was entered against Respondent,  
5 permanently enjoining Respondent from future violations of Sections 17(a)(2) and 17(a)(3) of the  
6 Securities Act of 1933<sup>1</sup> ("Securities Act"). Moreover, the final judgement provides that  
7 Respondent shall be liable for disgorgement of \$25,000, representing profits gained as a result of  
8 the conduct alleged in the complaint, together with prejudgment interest in the amount of  
9 \$1,592.26, and a civil penalty in the amount of \$100,000 pursuant to Section 20(d)(1) of the  
10 Securities Act [15 U.S.C. § 77t(d)(1)]. In addition, on or about March 3, 2011, the Commission  
11 issued an Order set forth in Securities and Exchange Commission Release No. 64025/  
12 Administrative Proceeding File No. 3-14283 suspending Respondent from appearing or practicing  
13 before the SEC as an accountant, and provided that after two years from the date of the Order,  
14 Respondent may request the SEC to consider his reinstatement by submitting an application to  
15 resume appearing or practicing before the SEC.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Discipline by SEC)**

18 12. Respondent is subject to disciplinary action under section 5100(l) of the code in that:  
19 (i) on or about February 17, 2011, final judgment was entered against Respondent by the SEC  
20 enjoining Respondent from further SEC violations, and ordering Respondent to pay disgorgement  
21 of \$25,000, representing profits gained as a result of the conduct alleged in the complaint,  
22 together with prejudgment interest in the amount of \$1,592.26, and a civil penalty in the amount  
23 of \$100,000 pursuant to Section 20(d)(1) of the Securities Act [15 U.S.C. § 77t(d)(1)]. In  
24 addition, on or about March 3, 2011, the Commission issued an Order set forth in Securities and  
25 Exchange Commission Release No. 64025/ Administrative Proceeding File No. 3-14283  
26 suspending Respondent from appearing or practicing before the SEC as an accountant. The

27 \_\_\_\_\_  
28 <sup>1</sup> The Securities Act of 1933 is contained within 15 U.S.C. §§77q(a)(2) and (a)(3).

1 circumstances leading to Respondent's suspension are set forth in paragraphs 9 through 11 set  
2 forth above which are incorporated herein by reference.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Discipline by Governmental Agency)**

5 13. Respondent is subject to disciplinary action under section 5100(h) of the code in that  
6 on or about March 3, 2011, a governmental body or agency suspended Respondent's right to  
7 practice before that governmental body or agency following a judgment against Respondent by  
8 that governmental agency on or about February 17, 2011. The circumstances are described in  
9 paragraphs 9 through 11 set forth above which are incorporated herein by reference.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Failure to Report Formal Investigation)**

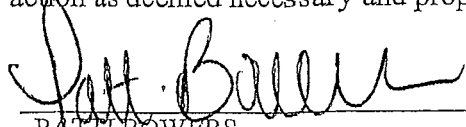
12 14. Respondent is subject to disciplinary action under sections 5100(g) and 5063(b)(3) of  
13 the code in that Respondent failed to report his investigation by the United States Securities and  
14 Exchange Commission to the CBA within 30 days of notice thereof.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
17 and that following the hearing, the California Board of Accountancy issue a decision:

- 18 1. Revoking or suspending or otherwise imposing discipline upon Certified Public  
19 Accountant Certificate Number 46384, issued to Sterling B. Abernathy;
- 20 2. Ordering Sterling B. Abernathy to pay the California Board of Accountancy the  
21 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
22 Professions Code section 5107; and
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 3/4/2012

25   
26 PATTI BOWERS  
27 Executive Officer  
28 California Board of Accountancy  
Department of Consumer Affairs  
State of California  
Complainant